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**Working group six:
“Subcontracting and organization of precarious workers”**

“Against the grain: Campaigns to unionize and battle worker subcontracting in Colombia”

Abstract

In Colombia, decades of fervent and widespread attacks on unionists and the associated negation or watering down of freedom of association rights (FoA), led to a situation in which unionization rates plummeted and, perhaps more pointedly, union activity began a prolonged descent into passivity. As unions scrambled to protect their members’ workplace rights in the face of employer and state onslaughts, they became sideline spectators to the parallel process of extensive inter-firm outsourcing, highlighted by labor intermediation involving the subcontracting of workers for poverty wages with little or no stability and often without the legal minimum work benefits.

Only recently, after numerous political reconfigurations, resulting in the ratification of the Obama-Santos Labor Action Plan in April 2011, has there been any notable success in union-led drives to affiliate and organize subcontracted workers. This paper will examine two such campaigns, highlighting the different strategies implemented and their links to the transforming nature of political opportunity structures in Colombia.

Longer summary

Subcontracting and complex processes of labor intermediation have been part of capital’s global strategy to reduce wage costs and simultaneously constrain the capacity for union organization and activity, thereby curtailing both the structural and associational power of labor. While such processes are a truly global phenomenon, their actual articulation is dependent on the local and national contexts wherein a particular firm is located. Contextual differences are grounded in

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the historical particularities of specific countries as well as the diverse socio-cultural developments of specific places. For instance, political and institutional structures shape the terrain on which economic actors move. Furthermore, the nature and evolution of a country's union movement and the heterogeneities within that movement, will ensure that there is a markedly variable manner in which unions and workers can confront the gradually expanding processes of firm outsourcing and labor intermediation.

In Colombia, South America's second most populous country, the union movement has experienced historical constraints of a severity more pronounced than in any other country of the world. While many unionists face harassment, employer and even state repression, as well as the structural hostilities wrought by neoliberal labor market flexibilization processes; unionists in Colombia have had to confront similar issues in a socio-political climate of extreme anti-unionist practices and culture. The number of trade unionists who have been killed in Colombia more than doubles that for the rest-of-the-world combined. Between 1979 and 2010, 2,944 Colombian unionists were murdered, 229 were forcefully disappeared, and a further 280 had attempts made on their life.¹ Such flagrant targeting of the unionist population implies a degree of constraint on union activity entirely foreign to the perceptions of most unionists in other countries. In the face of such victimization, the Colombian union density and collective bargaining coverage has declined precipitously in recent decades. Indeed, for 2010, less than 390,000 Colombian workers were beneficiaries of a Collectively Bargained Contract (CBC)², of a total occupied workforce of more than 19 million,³ giving CBC in Colombia a total firm-wide coverage of only 2.08%.⁴ In terms of union density, for 2011, this came to only 3.9%, one of the lowest rates of unionization in the entire continent.

¹ Information taken from: ENS & CCJ. 2012. *Imperceptiblemente Nos Encerraron: Exclusion del Sindicalismo y Logicas*

² ENS (2011), *Informe de Trabajo Decente, 2010. De giros discursivos a realidades contradictorias*. Ediciones Escuela Nacional Sindical: Medellin, October, p.90.

³ In 2010, according to the DANE, the total national occupied population in Colombia came to 19.279,000 people.

⁴ ENS (2011), op cit., p.94.

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Faced with a long ingrained culture of anti-union sentiment and practice, the Colombian union movement as a whole, has been very slow to devise novel and innovative strategies that seek to organize subcontracted and/or precarious workers. However, in very recent times, building upon various scales of union solidarity and transnational union networks (TUN) (see: Anner, 2011), grounded in both passed relationships of what we may term “humanitarian solidarity”, together with alliances invigorated by relatively new union structures at the global level (especially, Global Union Federations (GUFs), there have been specific cases where the capital assault on worker stability and working conditions, via the spread of subcontracting processes, has been at least temporarily disarmed. This paper will offer an overview and critical commentary of two such union campaigns, highlighting: the specific labor relations, labor hiring practices and working conditions as well as the degree of union activity and organization prior to the campaign’s initiation; the diverse actors involved in these campaigns; the manner in which the campaigns took advantage of specific and contextual “political opportunity structures” (Tarrow, 1998); and the general lessons we can take from these campaigns, in terms of how they may help delineate any emerging forms of workers’ and union power.

The two cases of study are:

1. The Sintracarbon campaign in the Cerrejon coal consortium, located in the department of La Guajira, in Colombia’s Northern Peninsular. This firm, the biggest coal producer in Colombia and located on one of the world’s biggest open-faced, coalmines, was created as a majority State-run enterprise (together with Exxon) in 1981. However, until its quick fire and below market-price privatization in 2001, its production was consistently below expectations. After being bought and split into three equal parts by a collection of the world’s biggest mining firms (Anglo American, BHP-Billiton, and Xstrata), production began to rise prodigiously, reaching a gran total of 33 million tons in 2011. While the firm has had union presence almost from the time of its inception - Sintracarbon was founded in 1983 - the complex chain of production outsourcing and service

externalization to smaller firms, over a period of many years, had led to the situation in which Sintracarbon was gradually losing its capacity to affiliate and represent workers, with many subcontracted workers laboring in conditions of informality. Cerrejon, by far the biggest firm in the department, employs directly approximately 5000 workers. These workers receive relatively good wages, stability and worker protection based on the firm-based CBC, which has been negotiated and signed on a two-year basis. Nonetheless, in recent years this firm has accelerated and deepened its outsourcing policy, hiring as many as 340 outside firms to undertake a plethora of tasks and services. These contracting firms, together, contract 6000 workers, most of whom were denied their constitutional and internationally-protected right to unionize as well as laboring on short-term contracts for the minimum wage and often being denied the legal wage stipulations (overtime pay, paid vacations, social security coverage, etc.,).

The national Directive of Sintracarbon, after numerous unsuccessful attempts at creating smaller, firm-based unions and affiliating workers, devised a novel tactic that included international lobbying. Taking advantage of, firstly, the fact that the great majority of Colombian coal sold to the European market passes through the Rotterdam port in Holland (approx. 20 million tons per year), and secondly, the widespread concern about the working conditions and anti-unionist practices in Colombia's coal industry; Sintracarbon, with financial and lobbying pressure from one of the Dutch Union Federations, (FNV) and the Global Union federation, ICEM,⁵ began a concerted effort to pressure Cerrejon to more rigorously monitor the working conditions of the 6000 subcontracted workers. At the same time, Sintracarbon began campaigning for the affiliation of these workers from some of the most prevalent contracting firms. In the CBC negotiated in December 2010, Sintracarbon managed to include a clause (Article 140) that obliged the mining consortium to ensure that its contractors complied with all aspects of Colombian

⁵ In July 2012, ICEM merged with another GUF and they now fall under the umbrella GUF called Industri-ALL.

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labor law, especially the right to unionize and the right to union activity (what we could term, Freedom of Association Rights).

In total, as of July 2012, Sintracarbon had managed to affiliate 2,247 subcontracted workers from seven different firms (including miners from another mining MNC, Glencore) and negotiate five new CBCs. Such a widespread affiliation and negotiation campaign increased the total number of Sintracarbon members by roughly 40%, coming to, in September 2012, 5,547.

2. Carrefour has a 14-year history in Colombia and is presently the number two-supermarket chain, behind Exito (owned by the French Casino group), with a total of 93 stores across the country. Despite signing an International Framework Agreement (IFA) with the GUF, UNI, in 2000, 11 years later, there was still no union present in Colombia. As well as Colombian Carrefour stores being the only ones in South America without a union, this firm, like its major local counterpart, had implemented a controversial but widely profitable policy of “de-laborizing” the hundreds of shopping bag checkout packers in its stores. These workers had been fired, and coaxed into affiliating to fictitious cooperatives – *Cooperativa de Trabajo Asociado* (CTA) – that operated outside the regulations of Colombia’s Labor Code. As such, these packers worked only for tips, receiving no wage, no vacations, no sick leave, and no job stability. The Colombian union movement had vehemently opposed the spread of CTAs, especially during the eight-year presidential period of Alvaro Uribe, and the need to prohibit the use of such fraudulent cooperatives was one of the key appeals and points of political pressure made during negotiations to reignite the stalled passage of the US-Colombia FTA. The Labor Action Plan Obama-Santos was the agreement that enabled the long-drawn-out approval of the FTA and it was a document created fundamentally, due to the insistence and successful lobbying of the Colombian and US labor movement. This agreement required the rapid prohibition of illegal labor intermediation such as that seen in CTAs. Carrefour and Exito became two of the first firms to implement a process of “rehiring” and formalizing the work contracts of their packers.

On the regional level, UNI in America, began in 2010 designing a campaign to unionize Carrefour-Colombia. The Collective Pact, which still exists in Colombia, has a clause that explicitly prohibits the creation of unions within the firm. This impediment, together with the high rotation rates of Carrefour staff, was one of the major obstacles in promoting a union within Carrefour. Nonetheless, UNI, in consultation with the President of Carrefour Colombia as well as with the Escuela Nacional Sindical (ENS), Colombia, took the leap in coordinating a nation-wide campaign to inform workers of the IFA signed by Carrefour as well as of their rights to form a union (ILO convention 87) and undertake union activities (ILO Conventions 98 and 135). All in all, this campaign involved more than 170 store visits and 400 meetings discussing union affiliation.⁶ The culmination of such intense, person-to-person union drive was that in November 2011, the *Union de Trabajadores y Trabajadoras de Grandes Superficies de Colombia, Carrefour S.A.* was founded in Giradot, Cundinamarca by 112 founding members. A national affiliation drive followed and as of July 2012, the new union had 3,326 members (a rate of unionization within the store of approximately 33.3%). However, more than just push for the creation of a union and the affiliation of a mass number of workers, the UNI-ENS campaign sought to promote a program of member training in multiple aspects of union work and activity, especially centering on how to design a “list of demands” to the firm and then negotiate a CBC.

⁶ Data taken from an interview with the Director General of the ENS, Luciano Sanin, in July 2012.